

## RATIONALE

# **STATE OF TENNESSEE NPDES GENERAL PERMIT for DISCHARGES of STORM WATER ASSOCIATED with CONSTRUCTION ACTIVITIES**

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## **1 Introduction**

This permit rationale (or fact sheet) sets forth the Division of Water Resources (the division's) basis for permit conditions to be applied statewide for the reissuance of the Tennessee NPDES General Permit for Discharges of Storm Water Associated with Construction Activities (CGP). The CGP is intended to authorize storm water point source discharges to waters of the State of Tennessee from construction activities that result in the disturbance of one acre or more of total land area.

## **2 Background**

On November 16, 1990, the EPA issued an NPDES rule (Phase I) that required a wide range of industrial activities to obtain permits to discharge storm water runoff. Category ten (x) from the extensive definition of "storm water discharges associated with industrial activity," (promulgated by the EPA in 40 CFR §122.26(b)(14)) includes construction activity, identified as following:

*“construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area and which are not a part of a larger common plan of development or sale”*

In December 1999, EPA finalized the "Phase II" regulations, which require controls on storm water discharges from a broader sector of municipalities, industries, and construction sites. On March 10, 2003, Phase II regulations came into effect, and extended coverage to construction activities (including other land-disturbing activities) that disturb one to five acres in size, including even smaller sites (<1 acre) that are part of a larger common plan of development or sale.

Because permit requirements for the above described construction activities are similar across the state, and because of the number of facilities now in existence and expected to be created in the future, it has been the division's position that this category of sources would be controlled appropriately under an NPDES general permit<sup>1</sup>. Initially, the State of Tennessee promulgated a general permit rule applicable to such construction activities. This general permit by rule became effective on September 26, 1992. The subsequent general NPDES permits had expiration dates of May 31, 2005, May 30, 2010 and May 23, 2016.

For the purpose of this proposed general permit, the term "storm water discharges associated with construction activity" means a discharge from any conveyance which is used for collecting and conveying storm water from construction activities including clearing, grading, filling and excavating (including borrow pits), or other similar construction activities that result in the disturbance of one acre or more of total land area.

### **3 Construction Activity and Potential Impacts on Water Quality**

Disturbed soil, if not managed properly, can be washed off-site during storms. Unless proper erosion prevention and sediment controls are used for construction activities, silt transport to local surface water is likely. Excessive silt in waterways causes adverse impacts due to biological alterations, reduced passage in rivers and streams, higher drinking water treatment costs for removing the sediment, and the alteration of water's physical/chemical properties, resulting in degradation of its quality. This degradation process is known as "siltation".

Historically, silt has been one of the primary pollutants in Tennessee waterways. The division has experimented with multiple ways to determine if a stream, river, or reservoir is impaired due to silt. These methods include visual observations, chemical analysis (total suspended solids), and macroinvertebrate/habitat surveys. The most satisfactory method for identification of impairment due to silt has been biological surveys that include habitat assessments. Ecoregions vary in the amount of silt that can be tolerated before aquatic life is impaired. Through work at reference streams, staff found that the appearance of sediment/silt in the water is often, but not always, associated with loss of biological integrity. Thus, for water quality assessment purposes, it is important to establish whether or not aquatic life is being impaired. For those streams where loss of biological integrity can be documented, the habitat assessment can determine if this loss is due to excessive silt deposits.<sup>2</sup>

Since one millimeter of soil over one acre site can weigh 5 tons, even a minor uncontrolled construction activity can cause major impairment in surface waters. Soil losses from pastureland averages 1.5

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<sup>1</sup> TDEC Rules, Chapter 0400-40-05-.02, - *Definitions*, states in paragraph (64): "Permit means an authorization, license, or equivalent control document issued by the Division of Water Resources which implements the requirements of the TWQCA. "Permit" includes an NPDES "general permit."

<sup>2</sup> [http://tn.gov/assets/entities/environment/attachments/water-quality\\_2014-305b-final.pdf](http://tn.gov/assets/entities/environment/attachments/water-quality_2014-305b-final.pdf)

tons/acre-year, cropland cultivation can lose 20 tons/acre-year, whereas major construction activities can result in 150 to 200 tons/acre-year in the stormwater runoff.

Site topography, ground cover and best management practices (BMP) are the key parameters for successful erosion control. This NPDES general permit requires that BMPs be used by the operators at construction sites. However, supplementary controls and even chemical treatment may be necessary for some specific site and construction activities to achieve effective protection of receiving stream and minimize degradation of water resources.

## 4 Present Permit Conditions

The present system protects the quality of the waters of the state exclusively through the administration of the Tennessee Department of Environment and Conservation's (TDEC) eight regional Environmental Field Offices (EFOs) and Nashville Central Office. Property owners, developers, builders, contractors and subcontractors who plan to conduct any construction must submit a Notice of Intent (NOI) and receive Notice of Coverage (NOC) from TDEC. Requesting coverage under the general permit means that an applicant had obtained and examined a copy of the permit, and thereby acknowledges applicant's claim of ability to be in compliance with permit terms and conditions.

## 5 Proposed Changes in the New Construction General Permit

### 5.1 Typographical Errors and Clarifications

The proposed general permit has been modified to address typographical errors and clarifications. We do not consider any of these typographical errors and clarifications to be of a substantial nature which in any way removes, weakens, or diminishes permit requirements. Such changes are, therefore, not specifically itemized in this permit rationale.

### 5.2 Phrase "impaired waters" has been replaced with phrase "waters with unavailable parameters."

This change is due to changes in the Tennessee Rules, Chapter [0400-40-03](#). The new permit is thereby aligned with the latest version of the General Water Quality Criteria, including verbiage describing antidegradation requirements. Consequently, language describing prohibitions of discharges to waters with unavailable parameters was updated to state:

*For receiving waters with unavailable parameters, discharges that would cause measurable degradation of the parameter that is unavailable or that would cause additional loadings of unavailable parameters that are bioaccumulative or that have criteria below method detection levels. Waters with unavailable parameters means any segment of surface waters that has been identified by the division as failing to support its designated classified uses. A discharge that complies with the additional requirements set forth in subpart 5.4 is not considered to cause measurable degradation of waters with unavailable parameters unless the division determines upon review of the SWPPP that there is a reason to limit coverage as set forth in paragraph d) above and the SWPPP cannot be modified to bring the site into compliance.*

**5.3 Language describing discharges not protective of aquatic threatened and endangered species, species deemed in need of management or special concern species has been updated.**

*Discharges or conducting discharge-related activities that are likely to jeopardize the continued existence of listed or proposed threatened or endangered aquatic species (or their critical habitat) under the Endangered Species Act (ESA) or other applicable state law or rule.*

*Discharges or conducting discharge related activities that will cause a prohibited take of federally listed aquatic species (as defined under Section 3 of the ESA and 50 CFR §17.3), unless such take is authorized under Sections 7 or 10 of the ESA.*

*Discharges or conducting discharge-related activities that will cause a prohibited “take” of state listed aquatic species (as defined in the Tennessee Wildlife Resources Commission Proclamation, Endangered or Threatened Aquatic Species, and in the Tennessee Wildlife Resources Commission Proclamation, Wildlife in Need of Management), unless such take is authorized under the provisions of T.C.A. § 70-8-106(e).*

**5.4 Clarification for site operators who are building single family residential houses on at-grade lots was added to section 1.4.2.**

*Site operators who are building single family residential houses on at-grade lots (see section 2.2.2 below) and who are submitting an application for coverage under this permit, may complete and submit Form CN-1249, the Stormwater Pollution Prevention Plan (SWPPP) for Single Family Residential Homebuilding Sites. This SWPPP template is available at [http://tdec.tn.gov/etdec/DownloadFile.aspx?row\\_id=CN-1249](http://tdec.tn.gov/etdec/DownloadFile.aspx?row_id=CN-1249). If significant grading of the lot or lots is necessary then use of Form CN-1249 is not appropriate.*

**5.5 Registration with the Tennessee Secretary of State.**

The Tennessee Water Quality Control Act requires that each person obtain a permit prior to discharging pollutants to waters of the state. The permit should be issued in the correct legal name of the person (whether an individual, government body, or corporate entity) so that whoever is responsible for discharging pollutants has permit coverage. For a business to be a “person” it must be a real corporate entity. And, for a business to lawfully operate in Tennessee, it must be in good standing with the SOS.

In a memo dated August 26, 2014, Mr. Robert J. Martineau, Jr., TDEC Commissioner stated:

“To achieve greater efficiencies and consistencies as we move to a business environment that utilizes more electronic information, it is important we have a standard definition of the “customer,” or legal entity, with whom TDEC is transacting business. In many program areas this is already very simple and straight forward. For example, state park employees clearly know who are their customers. However, in areas like our environmental regulatory programs, the true legal entity is not always apparent.

Divisions do not currently define and identify customers in their applications and databases in a consistent and standard way across the department. That reality has led to customer duplication within TDEC’s various programs and systems and prevents us from being able to connect and report consolidated data by entity. It is important that we have a way to connect all related sections of an entity

to the real legal entity while fully recognizing that each program area has their own unique needs and requirements and may deal with different sections of the legal entity.”

Using business registration with the Tennessee Secretary of State, Division of Business Services and the corresponding SOS numbers is the most effective way to confirm identity of permit applicants, particularly with respect to any necessary civil enforcement action.

The draft permit reserves the right for the Department to deny permit coverage to artificial persons such as corporations or limited partnerships that are not properly registered and in good standing with the Tennessee Secretary of State (“SOS”) Division of Business Services. The new NOI requests that applicants provide the SOS control number to facilitate the Department’s review, which will primarily include checking the SOS database at <https://tnbear.tn.gov/ecommerce/filingsearch.aspx>.

#### **5.6 Updated fee schedule was added.**

*As defined in Tennessee Rules, Chapter 0400-04-11, new fee schedule was described in the new permit.*

## **6 Permit Issuance and Public Notice Procedures**

This general permit is drafted in accordance with applicable NPDES regulations (40 CFR 122, 123, 124, and 125), the Tennessee Water Quality Control Act (T.C.A. § 69-3-101, et.seq.), and the TDEC’s permit issuance regulations in TN Rule 1200-4-05.

The applicable regulations for issuance of this general permit are found in 40 CFR 122.28 and 123.44, and the regulations for fact sheet requirements are found in 40 CFR 124.8 and 124.56.

The division will publish notice of its intent to issue the CGP for storm water discharges associated with construction activity and notice of one or more public hearings to receive comments on the draft permit. At least 30 days notice will be given for the public hearings. Comments will be received at least 10 ten days after the last hearing. Any interested person may request copies of the rationale (fact sheet) and draft permit and submit written comments on the draft permit.

The division will hold public hearings at the following locations with a teleconference to all EFOs:

Date	City	Location	Time
June 10, 2016	Nashville, TN 37243	William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue 3 <sup>rd</sup> Floor - Nashville Room	2:00 P.M. Central Time *

\* Informational session regarding the new Draft CGP will be from 1 PM to 2 PM.

NPDES General Permit for Discharges of Storm Water Associated with Construction Activity  
Rationale

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